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LANDLORD AND TENANT.—RESPONSIBILITY OF LANDLORD FOR CONDITION OF PREMISES.—Where a tenant occupied premises for more than a year without experiencing any discomfort, and then owing to the offensive odor of food carried by the rats from a recently established and adjoining restaurant in the same building the tenant's office was rendered untenable, *Held*, the landlord was not liable for the condition and the tenant was not thereby relieved from his obligation to pay rent. *Lumpkin v. Provident Loan Society, Ltd.*, (Ga. App. 1915) 84 S. E. 216.

The failure of the defendant to covenant against the rats and bad odors, and absence of liability on the part of the landlord for extraordinary and unforeseen occurrences, serve as a basis for the court's decision. A review of the authorities shows a division of the courts upon the question involved in the case at bar. Accord. *McKeon v. Cutter*, 156 Mass. 296. Several more recent decisions appear to be contrary to the rule set forth in the above mentioned cases and enunciate what would seem to be the more equitable rule. Thus, "Nightly meetings of rats coupled with offensive odors which increased until the premises became untenable, amounts to a constructive eviction and relieves from liability to pay rent." *Barnard Realty Co. v. Bonawitt*, 155 App. Div. 182; *Madden v. Bullock*, 115 N. Y. Supp. 723; *Steep v. Simpson*, 141 N. Y. Supp. 863, where innumerable bed-bugs were held to amount to a constructive eviction. It matters not that the presence of the rodents or odors is in no way due to the fault of the landlord, (*Steep v. Simpson*, supra), nor does the fact that the landlord attempted in every available way to remedy the condition relieve him from responsibility and liability. *Madden v. Bullock*, supra.

LIBEL AND SLANDER.—QUALIFIED PRIVILEGE.—In an action for slander, defendant pleaded qualified privilege, in that the words were spoken in a conversation with her husband at a time when she understood her husband was likely to be arrested for his conduct with the plaintiff, and with another woman where he lived, and that it would result in disgrace being brought upon the family, and that she desired to warn him in the protection of his own interests as well as that of the family. *Held*, that an instruction charging that if a third person overheard what was said, the matter was not privileged unless such person was a mere eaves-dropper, was error. *Conrad v. Roberts*, (Kans. 1915) 147 Pac. 795.

There is no question that where there exists between two or more parties such a confidential relation as to throw on the party making the statement the duty of protecting the "interests of the persons concerned," the occasion is qualifiedly privileged. The further proposition that such a relationship exists between husband and wife is equally uncontroverted. NEWELL, LIBEL AND SLANDER, 579. The question, then, is whether the fact that others are present and hear the alleged slandering statements destroys the privilege. The cases seem to hold that the fact that a communication is made in the hearing of other than the parties immediately interested will not of itself destroy the privilege. *Hatch v. Lane*, 105 Mass. 394; *Fahr v. Hayes*, 50 N. J. L. 275; *Redgate v. Roush*, 61 Kans. 480; *Chaffin v. Lynch*, 84 Va.

884. Where, however, strangers to the privileged occasion are present by the invitation or design of the defendant, the privilege is lost. *Fresh v. Cutter*, 73 Md. 87; *Dale v. Harris*, 109 Mass. 193. As this does not appear to have been the situation in the principal case, the decision is undoubtedly sound.

MARRIAGE.—BREACH OF PROMISE.—The action was brought to recover damages for a breach of promise to marry. After suit was commenced defendant died and the action was continued against the executor. As special damages plaintiff alleged and proved that she gave up her millinery business upon defendant's request and promise of marriage and support. *Held*, that action did not survive death of defendant. *Quirk v. Thomas*, [1915] 1 K. B. 798.

As a general rule a right of action for breach of contract survives death and is enforceable against the personal representative. *Hambly v. Trott*, 1 Cowp. 371. A breach of promise of marriage is an exception to this rule, because a breach of such a contract does not affect the estate of the parties but is essentially an injury to the feelings and sentiment. *Wade v. Kalbfleisch*, 58 N. Y. 282, *Grubb's Admr. v. Sult*, 32 Gratt. 203. There have, however, been numerous dicta holding that such an action could be maintained against a personal representative if special damage was alleged and pleaded. *Stebbins v. Palmer*, 1 Pick. 71; *Chase v. Fitz*, 132 Mass. 359; *Hovey v. Page*, 55 Me. 142; *Lattimore v. Simmons*, 13 Serg. & R. 183; *Finlay v. Chirney*, 20 Q. B. D. 484. In *Finlay v. Chirney*, LORD ESHER said that the damage to be considered must be damage affecting property and that if the plaintiff had agreed to give up a better place or employment and did give it up, it might be special damage. The court in the instant case considered the question still open and did not feel bound by anything said in the above cases as to whether or not proof of special damage would make a breach of promise maintainable against a personal representative; and it came to the conclusion that allegation and proof of special damage did not prevent the cause of action for breach of promise from dying with the promisor. "Now, inasmuch as there is no obligation affecting property on either side in a contract of marriage, I fail to see how the fact that one of the parties suffered pecuniary loss from the breach of the contract can impose a liability on the executor of the party who broke the contract."

MALICIOUS PROSECUTION.—LIABILITY FOR MALFEASANCE OF OFFICER.—Plaintiff, at the instigation of the defendant, was arrested wrongfully under a writ which commanded that he be brought before a justice of the peace. Instead, however, he was imprisoned for a period of about three days. *Held*, that even though such action under this writ was unlawful and unauthorized, plaintiff's imprisonment was a proper element of damage, since a person who sets on foot a malicious prosecution is liable for its continuance, and for the malfeasance of the officer making the arrest. *Lyons v. Davy-Pocahontas Coal Co.*, (W. Va. 1915), 84 S. E. 744.

The cases in America involving this question are far from being a unit upon the proposition as to how far the liability of one who starts a malicious